

# **(1)ARTICLE 9**

## **ENVIRONMENTAL CONTROL REGULATIONS**

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## 9.1 GENERAL PROVISIONS.

### 9.1.1 TITLE

This ordinance shall be officially known as “The Phase II Stormwater Ordinance.” It is referred to herein as “this ordinance.”

### 9.1.2 AUTHORITY

The Kannapolis City Council is authorized to adopt this ordinance pursuant to North Carolina law, including but not limited to Article 14, Section 5 of the Constitution of North Carolina; North Carolina General Statutes 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Session Law 2004-163; Chapter 160A, §§ 174, 185 and [; as well as Chapter 113A, Article 4 (Sedimentation Pollution Control)] [; Article 21, Part 6 (Floodway Regulation) [; Chapter 160A, Article 19 (Planning and Regulation of Development), ; Chapter 153A, Article 18].

### 9.1.3 FINDINGS

It is hereby found by the Kannapolis City Council that: Development and redevelopment alter the hydrologic response of local watersheds and increases stormwater runoff rates and volumes, flooding, soil erosion, stream channel erosion, nonpoint and point source pollution, and sediment transport and deposition, and reduction of groundwater recharge;

These changes in stormwater runoff contribute to increased quantities of water-borne pollutants and alterations in hydrology which are harmful to public health and safety as well as to the natural environment; and

These effects can be managed and minimized by applying proper design and well-planned controls to manage stormwater runoff from development sites.

Further, the Federal Water Pollution Control Act of 1972 (“Clean Water Act”) and federal Phase II Stormwater Rules promulgated under it, as well as rules of the North Carolina Environmental Management Commission promulgated in response to federal Phase II requirements, compel certain urbanized areas, including this jurisdiction, to adopt the minimum stormwater controls such as those included in this ordinance.

Therefore, the Kannapolis City Council hereby adopts water quality and quantity regulations set forth in this Ordinance to meet the requirements

of state and federal law regarding control of stormwater runoff and discharge.

### 9.1.4 PURPOSE

#### A. General

The purpose of this ordinance is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post-development stormwater runoff and nonpoint and point source pollution associated with new development and redevelopment as well as illicit discharges into municipal stormwater systems. It has been determined that proper management of construction-related and post-development stormwater runoff will minimize damage to public and private property and infrastructure, safeguard the public health, safety, and general welfare, and protect water and aquatic resources.

#### B. Specific

This ordinance seeks to meet its general purpose through the following specific objectives and means:

1. Establishing decision-making processes for development that protects the integrity of watersheds and preserves the health of water resources;
2. Requiring that new development and redevelopment maintain the pre-development hydrologic response in their post-development state as nearly as practicable for the applicable design storm in order to reduce flooding, streambank erosion, nonpoint and point source pollution and increases in stream temperature, and to maintain the integrity of stream channels and aquatic habitats;
3. Establishing minimum post-development stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;
4. Establishing design and review criteria for the construction, function, and use of structural <sup>(1)</sup>Stormwater Control Measures (SCM) that may be used to meet the

minimum post- development stormwater management standards;

5. Encouraging the use of better management and site design practices, such as the use of vegetated conveyances for stormwater and the preservation of greenspace and other conservation areas to the maximum extent practicable;

6. Establishing provisions for the long-term responsibility for and maintenance of structural and nonstructural <sup>(1)</sup>SCM to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety;

7. Establishing administrative procedures for the submission, review, approval and disapproval of stormwater management plans, for the inspection of approved projects, and to assure appropriate long-term maintenance.

8. Coordinating site design plans that include open space and natural areas as referenced within the Unified Development Ordinance.

9. Controlling illicit discharges into the municipal separate stormwater system.

10. Controlling erosion and sedimentation from construction activities.

11. Assigning responsibility and processes for approving the creation and maintenance of adequate drainage and flood damage prevention.

#### **9.1.5 APPLICABILITY AND JURISDICTION**

##### **A. General**

Beginning with and subsequent to its effective date, this ordinance shall be applicable to all development and redevelopment, including, but not limited to, site plan applications, subdivision applications, and grading applications, unless exempt pursuant to Subsection (B) of this Section, Exemptions, below.

##### **B. Exemptions**

Development and redevelopment that disturb less than one acre are not exempt if such

activities are part of a larger common plan of development or sale, even though multiple, separate or distinct activities take place at different times on different schedules.

Activities that are exempt from permit requirements of Section 404 of the federal Clean Water Act, as specified in 40 CFR 232 (primarily, ongoing farming and forestry activities) are exempt from the provisions of this ordinance.

##### **C. No Development or Redevelopment Until Compliance and Permit**

No development or redevelopment shall occur except in compliance with the provisions of this ordinance or unless exempted. No development for which a permit is required pursuant to this ordinance shall occur except in compliance with the provisions, conditions, and limitations of the permit.

##### **D. Map**

The provisions of this ordinance shall apply within the Kannapolis municipal boundaries and property within the extra territorial jurisdiction (ETJ) of the City.

#### **9.1.6 INTERPRETATION**

##### **A. Meaning and Intent**

All provisions, terms, phrases, and expressions contained in this ordinance shall be construed according to the general and specific purposes set forth in 9.1.4 Purpose. If a different or more specific meaning is given for a term defined elsewhere in Kannapolis Code of Ordinances, the meaning and application of the term in this ordinance shall control for purposes of application of this ordinance.

##### **B. Text Controls in Event of Conflict**

In the event of a conflict or inconsistency between the text of this ordinance and any heading, caption, figure, illustration, table, or map, the text shall control.

##### **C. Authority for Interpretation**

The Director of Public Works or his designee has authority to determine the interpretation of this ordinance. Any person may request an interpretation by submitting a written request to the Director of Public Works or his designee who shall respond in writing within 30 days. The Director of Public Works or his designee

shall keep on file a record of all written interpretations of this ordinance.

**D. References to Statutes, Regulations, and Documents**

Whenever reference is made to a resolution, ordinance, statute, regulation, manual (including the Design Manual), or document, it shall be construed as a reference to the most recent edition of such that has been finalized and published with due provision for notice and comment, unless otherwise specifically stated.

**E. Computation of Time**

The time in which an act is to be done shall be computed by excluding the first day and including the last day. If a deadline or required date of action falls on a Saturday, Sunday, or holiday observed by the City of Kannapolis, the deadline or required date of action shall be the next day that is not a Saturday, Sunday or holiday observed by the City of Kannapolis. References to days are calendar days unless otherwise stated.

**F. Delegation of Authority**

Any act authorized by this Ordinance may be carried out by the Director of Public Works or his designee.

**G. Usage**

**1. Mandatory and Discretionary Terms**

The words “shall,” “must,” and “will” are mandatory in nature, establishing an obligation or duty to comply with the particular provision. The words “may” and “should” are permissive in nature.

**2. Conjunctions**

Unless the context clearly indicates the contrary, conjunctions shall be interpreted as follows: The word “and” indicates that all connected items, conditions, provisions or events apply. The word “or” indicates that one or more of the connected items, conditions, provisions or events apply.

**3. Tense, Plurals, and Gender**

Words used in the present tense include the future tense. Words used in the singular number include the plural number and the plural number includes the singular number, unless the context of the particular usage clearly indicates otherwise. Words used in the masculine gender include the feminine gender, and vice versa.

**H. Measurement and Computation**

Lot area refers to the amount of horizontal land area contained inside the lot lines of a lot or site.

**9.1.7. DESIGN MANUAL**

**A. Reference to Design Manual ("Design Manual")**

The Director of Public Works or his designee shall use the policy, criteria, and information, including technical specifications and standards, in the most recent edition of the North Carolina Department of Environmental and Natural Resources ("NCDENR") Manual of Stormwater Best Management Practices as the basis for decisions about stormwater permits and about the design, implementation and performance of structural and non-structural <sup>(1)</sup>SCM.

The NCDENR Manual of Stormwater Best Management Practices includes a list of acceptable stormwater treatment practices, including the specific design criteria for each stormwater practice. Stormwater treatment practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards of the Phase II laws. Exceptions to the NCDENR <sup>(1)</sup>SCM Manual will be the decision of the Director of Public Works or his designee.

**B. Relationship of Design Manual to Other Laws and Regulations**

If the specifications or guidelines of the NCDENR Manual of Stormwater Best Management Practices are more restrictive or apply a higher standard than other laws or regulations, that fact shall not prevent application of the specifications or guidelines in the NCDENR Manual of Stormwater Best Management Practices.

**C. Changes to Standards and Specifications**

If the standards, specifications, guidelines, policies, criteria, or other information in the NCDENR Manual of Stormwater Best Management Practices are amended subsequent to the submittal of an application for approval pursuant to this ordinance but prior to approval, the new information shall control and shall be utilized in reviewing the application and in implementing this ordinance with regard to the application.

**9.1.8. RELATIONSHIP TO OTHER LAWS, REGULATIONS AND PRIVATE AGREEMENTS****A. Conflict of Laws**

This ordinance is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation or other provision of law, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare, shall control.

**B. Private Agreements**

This ordinance is not intended to revoke or repeal any easement, covenant, or other private agreement. However, where the regulations of this ordinance are more restrictive or impose higher standards or requirements than such easement, covenant, or other private agreement, then the requirements of this ordinance shall govern. Nothing in this ordinance shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not legitimize any failure to comply with this ordinance.

In no case shall the City of Kannapolis be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

**9.1.9. SEVERABILITY**

If the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this ordinance.

**9.1.10. EFFECTIVE DATE AND TRANSITIONAL PROVISIONS****A. Effective Date**

This Ordinance shall take effect on August 25, 2008.

**B. Final Approvals, Complete Applications**

All development and redevelopment projects for which complete and full applications were submitted and approved by the City of Kannapolis prior to the effective date of this ordinance shall be exempt from complying with all provisions of this ordinance dealing with the control and/or management of post-construction runoff, but shall be required to comply with all other applicable provisions, including but not limited to illicit discharge provisions.

**C. Violations Continue**

Any violation of provisions existing on the effective date of this ordinance shall continue to be a violation under this ordinance and be subject to penalties and enforcement under this ordinance unless the use, development, construction, or other activity complies with the provisions of this ordinance.

## 9.2 ADMINISTRATION AND PROCEDURES.

### 9.2.1. REVIEW AND DECISION-MAKING ENTITIES

#### A. Director of Public Works

##### 1. Designation

The Director of Public Works or his designee shall administer and enforce this ordinance.

##### 2. Powers and Duties

In addition to the powers and duties that may be conferred by other provisions of the Kannapolis Code of Ordinances and other laws, the Director of Public Works or his designee shall have the following powers and duties under this ordinance:

- a. To review and approve, approve with conditions, or disapprove applications for approval of plans pursuant to this ordinance.
- b. To make determinations and render interpretations of this ordinance.
- c. To establish application requirements and schedules for submittal and review of applications and appeals, to review and make recommendations on applications for development or redevelopment approvals.
- d. To enforce the provisions of this ordinance in accordance with its enforcement provisions.
- e. To maintain records, maps, and official materials as relate to the adoption, amendment, enforcement, or administration of this ordinance.
- f. To designate appropriate other person(s) who shall carry out the powers and duties of the Director of Public Works.
- g. To take any other action necessary to administer the provisions of this ordinance.

### 9.2.2. REVIEW PROCEDURES

#### A. Permit Required; Must Apply for Permit

A stormwater permit is required for all development and redevelopment unless exempt pursuant to this ordinance. A permit may only be issued subsequent to a properly submitted and

reviewed permit application, pursuant to this section. See Article 3.2.8 Stormwater Management Permits for permit submittal requirements and review procedures.

### 9.2.3. APPLICATIONS FOR APPROVAL

#### A. Concept Plan and Consultation Meeting

Before a stormwater management permit application is deemed complete, the Director of Public Works or his designee or developer may request a consultation on a concept plan for the post-construction stormwater management system and stormwater drainage plan to be utilized in the proposed development project. This consultation meeting should take place at the time of the preliminary plan of subdivision or other early step in the development process. The purpose of this meeting is to discuss the post-construction stormwater management measures necessary for the proposed project, as well as to discuss and assess constraints, opportunities and potential approaches to stormwater management designs before formal site design engineering is commenced. Local watershed plans, the natural areas as referenced within the Unified Development Ordinance, and other relevant resource protection plans may be consulted in the discussion of the concept plan.

See Appendix B.13 Stormwater Concept Plan for information that shall be included in the concept plan, which should be submitted in advance of the meeting. See Appendix C.5 Stormwater Management for requirements for Stormwater Drainage Plans.

#### B. Stormwater Management Permit Application

The stormwater management permit application shall detail how post-development stormwater runoff will be controlled and managed and how the proposed project will meet the requirements of this ordinance, including section 9.3 Standards of this ordinance. All plans shall be prepared by a qualified registered North Carolina professional engineer, surveyor, soil scientist or landscape architect, and the engineer, surveyor, soil scientist or landscape architect shall perform services only in their area of competence, and shall verify that the design of

all stormwater management facilities and practices meets the submittal requirements for complete applications, that the designs and plans are sufficient to comply with applicable standards and policies found in the Design Manual, and that the designs and plans ensure compliance with this ordinance. All plans submitted as part of the stormwater management permit application shall be approved by the Director of Public Works or his designee.

The submittal shall include all of the information required in the submittal checklist established by the Director of Public Works or his designee. Incomplete submittals shall be treated pursuant to [Article 3](#).

#### **C. As-Built Plans and Final Approval**

Upon completion of a project, and before a certificate of occupancy shall be granted, the applicant shall certify that the completed project is in accordance with the approved stormwater management plans and designs, and shall submit actual “as built” plans for all stormwater management facilities or practices after final construction is completed.

The plans shall show the final design specifications for all stormwater management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed. The designer of the stormwater management measures and plans shall certify, under seal, that the as-built stormwater measures, controls, and devices are in compliance with the approved stormwater management plans and designs and with the requirements of this ordinance. A final inspection and approval by the Director of Public Works or his designee shall occur before the release of any performance securities.

#### **D. Other Permits**

No certificate of compliance or occupancy shall be issued without final as-built plans and a final inspection and approval by the Director of Public Works or his designee, except where multiple units are served by the stormwater practice or facilities, in which case the Public Works Director or his designee may elect to withhold a percentage of permits or certificates of occupancy until as-built plans are submitted and final inspection and approval has occurred.

#### **9.2.4. APPROVALS**

See [Article 3](#) for conditions of approval for stormwater permits.

#### **9.2.5. <sup>(1)</sup>VARIANCES**

The Board of Adjustment may authorize variances from the specific requirements of this Article, subject to the requirements below.

##### **A. APPROVAL PROCEDURE.**

1. The Board of Adjustment shall conduct a hearing on variance requests in accordance with the procedures set forth in § 3.7 of this Ordinance. No variance shall be authorized or carried out until the applicant has obtained approval by the Board of Adjustment.

2. Major site plan applications shall be filed concurrently with all variance applications. The City of Kannapolis Planning and Engineering Departments shall review the site plan to ensure the variance approval criteria have been satisfied and any potential negative impacts have been mitigated. The site plan and associated comments shall be provided to the Board of Adjustment during their deliberations.

##### **B. APPROVAL CRITERIA.**

1. Variances shall only be granted by the Board of Adjustment if the applicant demonstrates that:

- a. Unnecessary hardships would result from strict application of the Ordinance; and
- b. The hardships result from conditions that are peculiar to the property, such as location, size, or topography; and
- c. The hardships did not result from actions taken by the petitioner; and
- d. The requested variance is consistent with the spirit, purpose, and intent of the Ordinance; will protect water quality; will secure public safety and welfare; and will preserve substantial justice. Merely proving the variance would permit a greater profit from the property shall not be considered adequate justification for a variance.

2. Notwithstanding the variance criteria above, variances may also be granted in the following instances:

- a. When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of <sup>(1)</sup>SCM; or
- b. When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water sewer, or gas construction and maintenance corridor, as long as it is located fifteen (15) feet landward of all perennial and intermittent surface waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of <sup>(1)</sup>SCM; or
- c. A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.

3. The Board of Adjustment may place reasonable and appropriate conditions and safeguards on the variance as part of the approval to ensure that adequate mitigation measures are associated with the proposed use. Violation(s) of any of the conditions shall be treated in the manner set forth in § 1.6 of this Ordinance.

#### C. SCOPE OF APPROVAL.

The approval of a variance shall authorize the applicant to apply for final site plan approval pursuant to § 3.6 of this Ordinance. All variance approvals require approval of the final site plan. Any variance approval shall become null and void if a required site plan is not approved within twelve (12) months following the date of approval by the Board of Adjustment. No zoning clearance permits shall be issued until the variance and final site plan are approved. Approval of a variance does not authorize any development activity.

#### D. SUBSEQUENT APPLICATIONS.

Subsequent applications for a variance shall be handled in the same manner as that for rezonings prescribed in § 3.3.8 of the Ordinance.

#### 9.2.6. APPEALS

See Article 3 for information regarding the appeals process for the issuance of stormwater permits.



## 9.3. STANDARDS.

### 9.3.1. GENERAL STANDARDS

All development and redevelopment to which this ordinance applies shall comply with the standards of this section.

### 9.3.2. DEVELOPMENT STANDARDS FOR LOW-DENSITY PROJECTS

Low-density projects shall comply with each of the following standards:

A. Stormwater runoff from the development shall be transported from the development by vegetated conveyances to the maximum extent practicable.

B. Low-density projects shall be subject to all of the regulations set forth in Article 4.15 River/Stream Overlay (RSOD) District of this ordinance.

C. The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans.

D. Meet all stormwater detention requirements in section 9.3.4 Development Standards For Detention Facilities.

### 9.3.3 DEVELOPMENT STANDARDS FOR HIGH-DENSITY PROJECTS

High-density projects shall implement stormwater control measures that comply with each of the following standards:

A. The measures shall control and treat the stormwater runoff volume leaving the project site generated by a one (1) inch rain event. Runoff volume drawdown time shall be a minimum of 48 hours, but not more than 120 hours. Volumes to be detained must comply with the methods listed in the NCDENR Stormwater Best Management Practices Manual.

B. All structural stormwater treatment systems used to meet the requirements of the program shall be designed to have a minimum of 85% average annual removal for Total Suspended Solids (TSS);

C. General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H .1008(c), as explained in the Design Manual;

D. High-density projects shall be subject to all the regulations set forth in Article 4.15 of this ordinance.

E. The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as recorded deed restrictions or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans

F. Meet all stormwater detention requirements in section 9.3.4 Development Standards For Detention Facilities.

### 9.3.4 DEVELOPMENT STANDARDS FOR DETENTION FACILITIES

See Appendix C.5 Stormwater Management for development standards for detention facilities.

### 9.3.5 CAPACITY OF STORMWATER MANAGEMENT FACILITIES.

All proposed site plans that require sediment and erosion control plan approval or that will exceed 20,000 square feet of impervious coverage shall be required to construct a complete drainage system sufficient to mitigate the impacts of the design rainfall event.

Post development runoff shall not exceed pre-development runoff unless a maximum discharge rate has been adopted for the applicable drainage basin and the discharge does not exceed that rate.

If a maximum discharge rate has not been adopted for the applicable drainage basin, post development discharge may not exceed predevelopment discharge. Stormwater volumes resulting from the proposed development shall be detained within the development and released at a rate no greater than existed prior to the development.

Detention facilities shall be designed to maintain the predeveloped runoff rate from the 1-year and 10-year, 24 hour design storm events.

Emergency spillway facilities shall be designed to accommodate the 50-year, 24 hour frequency storms. Cross-drainage storm sewers shall be designed for a 25-year, 24 hour frequency storm, unless located within a FEMA flood hazard area, in which case the storm sewer shall be designed for the 100-year, 24 hour storm event. All other storm sewers shall be designed for a 10-year, 24 hour frequency storm.

All industrial, commercial, and residential subdivision site plans shall include an analysis of off-site downstream features to determine the stormwater impacts on the receiving private and public properties. The analysis shall extend a minimum of one-fourth of a mile downstream from the project and include measures to mitigate these impacts.

**9.3.5.1 CHARLOTTE MECKLENBURG STORM WATER DESIGN MANUAL.** The City Council hereby finds that hydrologic conditions in Cabarrus and Rowan County and Mecklenburg County are similar and that it is in the public interest to maintain a uniform regional procedure for computing the stormwater impacts of new development. Accordingly, the methodology of computing peak flows, runoff volumes, and discharge capacities for storm events and stormwater management facilities shall be computed using the methodology in accordance with the *Charlotte Mecklenburg Storm Water Design Manual*. U.S. Geological Survey and NOAA (National Oceanic and Atmospheric Administration) rainfall data for Cabarrus and Rowan County shall be used in the analysis of stormwater facilities. A copy of the Charlotte Mecklenburg Storm Water Design Manual can be viewed at the City of Charlotte-Mecklenburg County website, [www.charmeck.org](http://www.charmeck.org).

In any case where the *Charlotte Mecklenburg Storm Water Design Manual* and the NCDENR Manual of Stormwater Best Management Practices have conflicting design standards, the state's <sup>(1)</sup>SCM requirements apply.

The following sections of the Stormwater Manual shall not apply to this Ordinance: Flood Analysis, Approximate Flood Limits, Storm Drain Location, Inlet Types and Spacing, Cross Slope, Curb and Gutter, and Detention Facilities Used for Credits, including any references to the Charlotte-Mecklenburg Land Development Standards Manual or to storm water fees.

### 9.3.6 STANDARDS FOR STORMWATER CONTROL MEASURES

#### A. Evaluation According to Contents of Design Manual

All stormwater control measures and stormwater treatment practices required under this ordinance shall be evaluated by the Director of Public Works or his designee according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice, in the Design Manual. The Director of Public Works or his designee shall determine whether they will be adequate to meet the requirements of this ordinance.

#### B. Determination of Adequacy; Presumptions and Alternatives

Stormwater treatment practices that are designed, and constructed, and maintained in accordance with the criteria and specifications in the Design Manual will be presumed to meet the minimum water quality and quantity performance standards of this ordinance. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the Design Manual, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this ordinance. The Director of Public Works or his designee may require the applicant to provide such documentation, calculations, and examples as necessary for the Director of Public Works or his designee to determine whether such an affirmative showing is made.

### 9.3.7 DEDICATION OF <sup>(1)</sup>SCMs, FACILITIES & IMPROVEMENTS

Easements, rights-of-way, or other legal access shall be provided to all stormwater management facilities for inspection, periodic maintenance, and infrequent repairs. Property owners and their successors and interest are responsible for the maintenance and upkeep of the easement area, operation and per the Maintenance Agreement (hereinafter defined). Easements in favor of the City must be provided for access, inspection, and emergency maintenance by the City when a property owner defaults on the maintenance agreement. Emergency maintenance performed or directed by the City shall be completed at the cost

of the owner of the detention facility. No permanent structures or other impediments to access shall be constructed within the area of easement.

### **9.3.8. OBSTRUCTION OF DRAINAGE CHANNELS PROHIBITED.**

No fences or structures shall be constructed across an open or closed drainage channel that will reduce or restrict the flow of water or adversely affect the public infrastructure.

The Director of Public Works or his designee may require any water course or stormwater management facility to be located within a dedicated drainage easement officially recorded by the Cabarrus or Rowan County Register of Deeds as a “permanent detention easement” that provides sufficient width for maintenance.

### **9.3.9. LOT GRADING AND LANDSCAPING STANDARDS.**

The following standards shall be followed in establishing the grading plan for a development.

#### **9.3.9.1. Positive Drainage Required.**

Developments shall be designed and constructed with a positive drainage flow away from buildings towards approved stormwater management facilities. Plans for drainage facilities shall be approved by the Engineer. All interim and permanent drainage facilities shall be designed and constructed in accordance with the standards established in the Stormwater Standards of this Ordinance.

#### **9.3.9.2. Drainage Plans to Account for All Development.**

In the design of site grading plans, all impervious surfaces in the proposed development (including off street parking) shall be considered.

#### **9.3.9.3. Protection from Sedimentation.**

Site grading and drainage facilities shall protect sinkholes, wetlands, ponds and lakes from increased sediment loading.

#### **9.3.9.4. Increased Runoff Prohibited**

Site grading shall not increase the volume or velocity of runoff onto downstream properties unless specifically approved as part of a project’s drainage plan. Exceptions to this will be at the discretion of the Public Works Director or his designee.

#### **9.3.9.5. Landscaping.**

All disturbed areas within the dedicated right-of-way and easements of any subdivision street shall be restored with vegetation. Street trees shall be planted or, where permitted trees already exist, consistent with the Landscaping Standards of this Article, maintained and protected between the paved areas and sidewalks. Where no sidewalks are required, street trees shall be planted or existing trees shall be maintained or protected between the paved areas and the edge of the right-of-way.

#### **9.3.9.6. Designation as Open Space.**

Stormwater facilities to be located in designated open space areas shall be regulated in accordance with § 6.5.3.5 of this Ordinance.

#### **9.3.9.6 Permeable Pavement.**

Certain provisions of this ordinance (See Parking Standards; Site Design & Standards) permit Permeable Pavement in some situations. Other Permeable Pavement is permitted if the location and design shall comply with the following:

**9.3.9.6.1** Permeable Pavement shall not be located in soils with an apparent or perched high water table or a depth to bedrock of less than ten (10) feet, as set forth in Table 16 of the Soil Survey.

**9.3.9.6.2** Permeable Pavement shall not be located on any slope exceeding ten percent (10%).

**9.3.9.6.3** Permeable Pavement designs shall meet the requirements in the NCDENR Manual of Stormwater Best Management Practices.

**9.3.9.6.4** The Permeable Pavement area shall be vacuum swept and washed with a high pressure hose not less than four (4) times per year.

### **9.3.10. VARIANCES**

See Appendix C.1.7 Improvements Variance for information on variances.

### **9.3.11. ADDITIONAL STANDARDS FOR SPECIAL SITUATIONS**

#### **A. Nutrient Sensitive Waters**

In addition to the standards for stormwater handling set out in the design manual,

development and redevelopment that drains in whole or part to class NSW waters shall design and implement the best stormwater practices that reduce nutrient loading, while still meeting the other requirements of this ordinance.

### **9.3.12. ONSITE WASTEWATER**

#### **A. Operation and Maintenance Requirements**

New and replaced onsite above ground systems for domestic wastewater installed after the effective date of this ordinance shall be subject to the same requirements for operation and maintenance as are structural <sup>(1)</sup>SCMs for stormwater, including, at a minimum, annual inspection reports and a recorded operation and maintenance agreement, pursuant to Section 4 of this ordinance. Below ground systems shall be maintained in proper working order.

#### **B. Standards for Operation and Maintenance**

Onsite systems for domestic wastewater, which are privately owned by a property owner and covered by this ordinance, shall be operated and maintained so as to avoid adverse effects on surface water and groundwater, including eutrophication of surface water and microbial or nitrate contamination of groundwater. Septic tank residuals shall be pumped whenever necessary to assure the proper operation of the system to meet these standards, and the septage shall be reused or disposed of in a manner that does not present significant risks to human health, surface water or groundwater.

## 9.4. MAINTENANCE.

### 9.4.1. GENERAL STANDARDS FOR MAINTENANCE

#### A. Function of <sup>(1)</sup>SCMs as Intended

The landowner or person in possession or control of the land upon which each structural <sup>(1)</sup>SCM is installed pursuant to this ordinance ("Owner") shall maintain and operate it so as to preserve and continue its function in controlling stormwater quality and quantity at the degree or amount of function for which the structural <sup>(1)</sup>SCM was designed.

#### B. Annual Maintenance Inspection and Report

The individual responsible for maintenance of any structural <sup>(1)</sup>SCM installed pursuant to this ordinance shall submit to the Director of Public Works or his designee an inspection report from a qualified registered North Carolina professional engineer, surveyor, or landscape architect performing services only in their area of competence. The inspection report shall contain all of the following:

1. The name and address of the land owner;
2. The recorded book and page number of the lot of each structural <sup>(1)</sup>SCM;
3. A statement that an inspection was made of all structural <sup>(1)</sup>SCMs;
4. The date the inspection was made;
5. A statement that all inspected structural <sup>(1)</sup>SCMs are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance; and
6. The original signature and seal of the engineer, surveyor, or landscape architect.

All inspection reports shall be on forms supplied by the Director of Public Works or his designee. An original inspection report shall be provided to the Director of Public Works or his designee beginning one year from the date of as-built certification and each year thereafter on or before the date of the as-built certification.

### 9.4.2 OPERATION AND MAINTENANCE AGREEMENT

#### A. In General

Prior to the conveyance or transfer of any lot or building site ("Lot") to be served by a structural <sup>(1)</sup>SCM pursuant to this ordinance, and prior to issuance of any permit for construction, development or redevelopment requiring a structural <sup>(1)</sup>SCM pursuant to this ordinance, the applicant or owner of the site must execute an operation and maintenance agreement that shall run with the land and be binding on all subsequent owners of the site, portions of the site, and lots or parcels served by the structural <sup>(1)</sup>SCM. Until the transference of all property, sites, or lots served by the structural <sup>(1)</sup>SCM, the original owner or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement.

1. The operation and maintenance agreement shall require the owner or owners or successors in interest to maintain, repair and, if necessary, reconstruct the structural <sup>(1)</sup>SCM, and shall state the terms, conditions, and schedule of maintenance for the structural <sup>(1)</sup>SCM. In addition, it shall grant to the City of Kannapolis a right of entry in the event that the Director of Public Works or his designee has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the structural <sup>(1)</sup>SCM; however, in no case shall the right of entry, of itself, confer an obligation on the City of Kannapolis to assume responsibility for the structural <sup>(1)</sup>SCM.

2. Each operation and maintenance agreement shall contain, without limitation, the following provisions:

- a. A description of the property on which the <sup>(1)</sup>SCM is located and all easements from the site to the facility;
- b. Size and /configuration of the <sup>(1)</sup>SCM;
- c. A statement that properties which will be served by the <sup>(1)</sup>SCM facility are granted rights to construct, use, inspect, replace, reconstruct, repair, maintain, access to the device and to transport, store, and discharge stormwater to and from the device;
- d. A statement that each lot served by the <sup>(1)</sup>SCM is jointly or severally responsible for repairs and

maintenance of the device and any unpaid ad valorem taxes, public assessments for improvements and unsafe building and public nuisance abatement liens charged against the facility, including all interest charges together with attorneys fees, cost and expenses of collection. A requirement of contribution in favor of each owner shall be included in the operation and maintenance agreement. That failure to maintain <sup>(1)</sup>SCM is a violation of the City Code potentially subjecting each lot owner subject to this legal document to significant daily civil penalties and other enforcement actions.

**3.** If an association is delegated these responsibilities, then membership into the association shall be mandatory for each parcel served by the device and any successive owner, the association shall have the power to levy assessments for these obligations, and that all unpaid assessments levied by the association shall become a lien on the individual parcel.

**4.** An operation and maintenance plan or manual, together with a budget, shall be provided by the initial developer. The plan or manual shall indicate what operation and maintenance actions are needed, and what specific quantitative criteria will be used to determine when those actions are to be undertaken. The plan or manual must indicate the steps that will be taken to restore a stormwater system to design specifications if a failure occurs. The budget shall include both annual costs such as routine maintenance, periodic sediment removal and replenishment of rip-rap, insurance premiums, taxes, mowing and reseeding, required inspections, and a sinking fund for structural; biological; or vegetative replacement of the <sup>(1)</sup>SCM, major repair and replacement repair of the <sup>(1)</sup>SCM and other cost of the stormwater control facilities. These required documents shall be attached to the property association declaration as an exhibit; and

**5.** A statement that the BMP shall be maintained in accordance with the attached stormwater operations and maintenance manual and budget, and at all times BMP

shall comply with all applicable laws, ordinances, regulations, rules and directives of governmental authorities, and that the BMP shall perform as designed.

**6.** The BMP shall be maintained by the homeowners' association, property owners' association, or designated commercial lot owner(s) in accordance with the approved stormwater operations and maintenance manual and budget, which manual shall be attached to the operations and maintenance agreement as an exhibit, and at all times the BMP shall comply with all applicable laws, ordinances, regulations, rules and directives of governmental authorities, and that the BMP shall perform as designed.

**7.** Common expenses include but are not limited to : (i) maintenance of the BMP and (ii) premiums for liability insurance in an amount of not less than one million dollars (\$1,000,000.00) covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership, or maintenance of common areas, including the BMP and the premiums of hazard insurance on the common area(s) insuring against all risk of loss commonly insured against, including fire and extended coverage of peril.

**8.** A statement that within permanently protected undisturbed open space areas no land-disturbing activity, placement of impervious surface, removal of vegetation, encroachment, construction or erection of any structure shall occur except in accordance with a permit first being issued by the City of Kannapolis.

**9.** A warning statement stating that the stormwater control measures are required to comply with Kannapolis City Code of Ordinances and that failure to maintain a <sup>(1)</sup>SCM is a violation of the City Code potentially subjecting each lot owner subject to this legal document to significant daily civil penalties and other enforcement actions.

**10.** The operation and maintenance agreement must be approved by the Director of Public Works or his designee prior to plan approval, and it shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat

approval. A copy of the recorded maintenance agreement shall be given to the Director of Public Works or his designee within fourteen (14) days following its recordation.

#### **B. Special Requirement for Homeowners' and Other Associations**

For all structural <sup>(1)</sup>SCMs required pursuant to this ordinance and that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity, ("Association") the required operation and maintenance agreement shall include all of the following provisions:

1. Acknowledgment that the association shall continuously operate and maintain the stormwater control and management facilities.
2. Establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of structural <sup>(1)</sup>SCMs. If structural <sup>(1)</sup>SCMs are not performing adequately or as intended or are not properly maintained, the City of Kannapolis, in its sole discretion, may remedy the situation, and in such instances the City of Kannapolis shall be fully reimbursed from the escrow account. Escrowed funds may be spent by the association for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the structural <sup>(1)</sup>SCMs, provided that the City of Kannapolis shall first consent to the expenditure.
3. Both developer contribution and annual sinking funds shall fund the escrow account. Prior to plat recordation or issuance of construction permits, whichever shall first occur, the developer shall pay into the escrow account an amount equal to fifteen (15) per cent of the initial construction cost of the structural <sup>(1)</sup>SCMs. Two-thirds (2/3) of the total amount of sinking fund budget shall be deposited into the escrow account within the first five (5) years and the full amount shall be deposited within ten (10) years following initial construction of the structural <sup>(1)</sup>SCMs. Funds shall be deposited each year into the escrow account. A portion of the annual assessments of the association shall include

an allocation into the escrow account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget.

4. The percent of developer contribution and lengths of time to fund the escrow account may be varied by the City of Kannapolis depending on the design and materials of the stormwater control and management facility.

5. Grant to the City of Kannapolis a right of entry to inspect, monitor, maintain, repair, and reconstruct structural <sup>(1)</sup>SCMs.

6. Each Owner, by acceptance of a deed or other instrument conveying title to a Lot, whether or not it shall be so expressed therein, is deemed to covenant and agree:

- a. to pay to the Association (or to any Person who may be designated by the Association to collect such monies) a stormwater assessment, ("Stormwater Assessment"), established and collected as hereinafter provided, and each Owner of a Lot, by acceptance of a deed or other instrument conveying title to a Lot, whether or not it shall be so expressed therein, is deemed to covenant and agree to pay to the Association (or to any person who maybe designated by the Association to collect such monies) such Stormwater Assessment. The annual budget for the Association shall include a line item evidencing the Stormwater Assessments, and the amount budgeted shall be sufficient to satisfy the total annual inspection, management and maintenance budget for the <sup>(1)</sup>SCM and any replacement account. The Association shall honor its obligations under the Agreement, and the Association shall assess the Stormwater Assessment. Each Owner of a Lot shall be obligated to pay the Stormwater Assessment, whether or not the annual budget contains the required line item for the Stormwater Assessment, and whether or not the annual budget is ratified by the members of the Association. No vote of the Owners is required to levy,

collect, or foreclose a Stormwater Assessment. Stormwater Assessments shall be paid to the Association at the same time annual assessments are due. Stormwater Assessments to be levied against such Lot shall be used as follows:

1. to pay the actual and estimated expenses incurred or anticipated to be incurred by the Association, including any reasonable reserve funds, under any stormwater operation and maintenance agreement, including maintenance of any <sup>(1)</sup>SCM so that at all times the <sup>(1)</sup>SCM shall perform as designed and shall comply with the stormwater operations and maintenance agreement, the City Code, applicable regulations and rules and directives of the City;
  2. to pay all legal, engineering and other professional fees incurred by the Association in carrying out its duties as set forth herein, or in the stormwater operations and maintenance agreement in connection with the <sup>(1)</sup>SCM; and
  3. payments to the City pursuant to the operations and maintenance agreement.
- b. In the event of nonpayment of any Stormwater Assessment for a period of forty-five (45) days or longer after the payment due date, such Stormwater Assessment, together with interest at a rate not to exceed the highest rate allowed by North Carolina law), as computed from the date the delinquency first occurs, late charges, and costs of collection thereof, including reasonable attorney's fees, shall be a charge on the land upon the filing of a claim of lien, in the manner provided in G.S.47F-3-116(g), in the office of Clerk of Superior Court in the County in which the Lot is located and shall be a continuing lien upon each Lot against which the assessment is made until paid in full. The lien may be foreclosed in accordance with North Carolina law, or in any other manner permitted by law. When the holder of a first mortgage or first deed

of trust of record or other purchaser of a Lot who obtains title to the Lot as a result of a foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns shall not be liable for the Stormwater Assessments against such Lot which became due prior to the acquisition of title to such Lot by such purchaser. In such instances, such unpaid assessments shall be deemed a debt collectible from all Owners, including the new Owner.

- c. Each Stormwater Assessment, together with late charges, interest, the costs of collection thereof, including attorney's fees, shall also be the personal obligation or corporate obligation of each individual or entity who was the Owner of a Lot at the time when the Stormwater Assessment first became due and payable. If more than one individual or entity held an ownership interest in a Lot at the time the Stormwater Assessment first became due, then each individual or entity shall be both jointly and severally liable. An Owner's personal obligation for payment of Stormwater Assessments shall not become the personal obligation of a subsequent Owner unless expressly assumed by the subsequent Owner, although the lien shall continue against the Lot until the amount due is paid.
- d. The creation of the Stormwater Assessments is for the benefit of the City, and the Stormwater Assessments may be collected and enforced by the City as provided herein and in the City of Kannapolis Code of Ordinances.
- e. Additional real property annexed to the Association shall be subjected to any existing operation and maintenance agreement upon the recording of the document annexing the additional property, either in the form of a new agreement and/or an amendment to an existing agreement (as determined by the City) which shall be entered into between the City and the Association to address the <sup>(1)</sup>SCMs of the additional property.
- f. There shall be dedicated for the benefit of each Lot, the Common Area and each Owner thereof:



1. a perpetual, irrevocable and nonexclusive easement, right and privilege to discharge and store surface water drainage from such lot or Common Area into the <sup>(1)</sup>SCM situated in private drainage easements that serve the property within the development, whether located on or off or the development, and
  2. a perpetual, irrevocable and non-exclusive easement, right and privilege to use and maintain <sup>(1)</sup>SCMs, including the right of access to and from the private drainage easements and other portions of the development as reasonably necessary to maintain the <sup>(1)</sup>SCMs.
- g. Each Owner of any portion of the property served by the <sup>(1)</sup>SCM is jointly and severally responsible for maintenance of such <sup>(1)</sup>SCM, including payment of any unpaid *ad valorem* taxes, public assessments for improvements, and unsafe building and public nuisance abatement liens charged against the <sup>(1)</sup>SCM, and including all interest charges thereon, together with the costs and expenses of collection incurred by the City or other collecting entity, including court costs and reasonable attorney's fees actually incurred. Each Owner of any portion of the property served by the <sup>(1)</sup>SCM has a right of contribution against all other Owners of other portions of the property served by the same <sup>(1)</sup>SCM for payment of such costs and expenses to the extent that the Owner having such right of contribution pays more than such Owner's prorata share thereof.
1. A statement that this agreement shall not obligate the City of Kannapolis to maintain or repair any structural <sup>(1)</sup>SCMs, and the City of Kannapolis shall not be liable to any person for the condition or operation of structural <sup>(1)</sup>SCMs.
  2. A statement that this agreement shall not in any way diminish, limit, or restrict the right of the City of Kannapolis to enforce any

of its ordinances as authorized by law.

3. A provision indemnifying and holding harmless the City of Kannapolis its agents, contractors, and employees for any costs and injuries arising from or related to the structural <sup>(1)</sup>SCM, unless the City of Kannapolis has agreed in writing to assume the maintenance responsibility for the <sup>(1)</sup>SCM and has accepted dedication of any and all rights necessary to carry out that maintenance.

#### 9.4.3 INSPECTION PROGRAM

Inspections and inspection programs by the City of Kannapolis may be conducted or established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in <sup>(1)</sup>SCMs; and evaluating the condition of <sup>(1)</sup>SCMs.

If the owner or occupant of any property refuses to permit such inspection, the Director of Public Works or his designee shall proceed to obtain an administrative search warrant pursuant to G.S. 15-27.2 or its successor. No person shall obstruct, hamper or interfere with the Director of Public Works or his designee while carrying out his or her official duties

#### 9.4.4 PERFORMANCE SECURITY FOR INSTALLATION AND MAINTENANCE

##### A. May Be Required

The City of Kannapolis may, at its discretion, require the submittal of a maintenance performance security or bond with surety, cash escrow, letter of credit or other acceptable legal arrangement prior to issuance of a permit in order to ensure that the structural <sup>(1)</sup>SCMs are:

1. installed by the permit holder as required by the approved stormwater management plan, and/or
2. maintained by the owner as required by the operation and maintenance agreement.

**B. Amount****1. Installation**

The amount of an installation performance security shall be the total estimated construction cost of the <sup>(1)</sup>SCMs approved under the permit, plus 25%.

**2. Maintenance**

The amount of a maintenance performance security shall be the present value of an annuity of perpetual duration based on a reasonable estimate of the annual cost of inspection, operation and maintenance of the <sup>(1)</sup>SCMs approved under the permit, at a discount rate that reflects the jurisdiction's cost of borrowing minus a reasonable estimate of long term inflation.

**3. Default**

Upon default of the owner to construct, maintain, repair and, if necessary, reconstruct any structural <sup>(1)</sup>SCMs in accordance with the applicable permit or operation and maintenance agreement, the Director of Public Works or his designee shall obtain and use all or any portion of the security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the owner to comply with the permit or maintenance agreement. In the event of a default triggering the use of installation performance security, the City of Kannapolis shall not return any of the unused deposited cash funds or other security, which shall be retained for maintenance.

**4. Costs in Excess of Performance Security**

In the event of default, the City may recover from the applicant, owner or successor the costs for enforcement actions including but not limited to court costs and attorney fees failure by the applicant or owner, the City of Kannapolis may collect from the applicant or owner.

**5. Refund**

Within sixty days of the final approval, the installation performance security shall be refunded to the applicant or terminated, with the exception of any amount attributable to the cost (plus 25%) of landscaping installation and ongoing maintenance associated with the <sup>(1)</sup>SCMs covered by the

security. Any such landscaping shall be inspected one (1) year after installation with replacement for compliance with the approved plans and specifications and, if in compliance, the portion of the financial security attributable to landscaping shall be released.

**9.4.5 NOTICE TO OWNERS****A. Deed Recordation and Indications On Plat**

The applicable operations and maintenance agreement pertaining to every structural <sup>(1)</sup>SCM shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval. If no subdivision plat is recorded for the site, then the operations and maintenance agreement shall be recorded with the county Register of Deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles.

**B. Signage**

Where appropriate as determined in the exclusive discretion of the Director of Public Works or his designee to assure compliance with this ordinance, structural <sup>(1)</sup>SCMs shall be posted with a conspicuous sign stating who is responsible for required maintenance and annual inspection. The sign shall be maintained so as to remain visible and legible.

**9.4.6. RECORDS OF INSTALLATION AND MAINTENANCE ACTIVITIES**

The owner of each structural <sup>(1)</sup>SCM shall keep records of inspections, maintenance, and repairs for at least five years from the date of creation of the record and shall submit the same upon reasonable request to the Director of Public Works or his designee.

**9.4.7. NUISANCE**

The owner of each stormwater <sup>(1)</sup>SCM, whether structural or non-structural <sup>(1)</sup>SCM, shall maintain it so as not to create or result in a nuisance condition.

**9.4.8. MAINTENANCE EASEMENT**

Every structural <sup>(1)</sup>SCM installed pursuant to this ordinance shall be made accessible for adequate maintenance and repair by a maintenance easement. The easement shall be recorded and its terms shall specify who may make use of the easement and for what purposes.

## 9.5. ENFORCEMENT AND VIOLATIONS.

### 9.5.1. GENERAL

#### A. Authority to Enforce

The provisions of this ordinance shall be enforced by the Director of Public Works, his or her designee. Whenever this section refers to the Director of Public Works, it includes his or her designee.

#### B. Violation Unlawful

Any failure to comply with an applicable requirement, prohibition, standard, or limitation imposed by this ordinance, or the terms or conditions of any permit or other development or redevelopment approval or authorization granted pursuant to this ordinance, is unlawful and shall constitute a violation of this ordinance.

#### C. Each Day a Separate Offense

Each day that a violation continues shall constitute a separate and distinct violation or offense.

#### D. Responsible Persons/Entities

Any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, <sup>(1)</sup>SCM, practice, or condition in violation of this ordinance shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this section. Persons subject to the remedies and penalties set forth herein may include any architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists; or an owner, any tenant or occupant, or any other person, who has control over, or responsibility for, the use or development of the property on which the violation occurs. For the purposes of this article, responsible person(s) shall include but not be limited to:

##### 1. Person Maintaining Condition Resulting In or Constituting Violation

An architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that

constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists.

#### 2. Responsibility For Land or Use of Land

The owner of the land on which the violation occurs, any tenant or occupant of the property, any person who is responsible for stormwater controls or practices pursuant to a private agreement or public document, or any person, who has control over, or responsibility for, the use, development or redevelopment of the property.

### 9.5.2. REMEDIES AND PENALTIES

The remedies and penalties provided for violations of this ordinance, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

#### A. Remedies

##### 1. Withholding of Certificate of Occupancy

The Director of Public Works or his designee or other authorized agent may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site and served by the stormwater practices in question until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.

##### 2. Disapproval of Subsequent Permits and Development Approvals

As long as a violation of this ordinance continues and remains uncorrected, the Director of Public Works or his designee or other authorized agent may withhold, and the Planning Director may disapprove, any request for permit or development approval or authorization provided for by this ordinance or the UDO for the land on which the violation occurs.

##### 3. Injunction, Abatements, etc.

The Director of Public Works or his designee, with the written authorization of the City Manager, may institute an action in a court of competent jurisdiction for a

mandatory or prohibitory injunction and order of abatement to correct a violation of this ordinance. Any person violating this ordinance shall be subject to the full range of equitable remedies provided in the General Statutes or at common law.

#### **4. Correction as Public Health Nuisance, Costs as Lien, etc.**

If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by North Carolina G.S. § 160A-193, the Director of Public Works or his designee, with the written authorization of the City Manager, may cause the violation to be corrected and the costs to be assessed as a lien against the property.

#### **5. Stop Work Order**

The Director of Public Works or his designee may issue a stop work order to the person(s) violating this ordinance. The stop work order shall remain in effect until the person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work order may be withdrawn or modified to enable the person to take the necessary remedial measures to cure such violation or violations.

#### **6. Discontinuance of Water Service**

Pursuant to the provisions of North Carolina G.S. § 160A-314 and this section, water service may be temporarily discontinued for willful disregard of this section. All applicable penalty fees may be applied in the event of service suspensions. In the event of continued gross noncompliance with this section, removal of the meter and service will be deemed proper and service will be discontinued. Connection fees and deposits will be forfeited.

#### **B. Civil Penalties**

Any person, firm or corporation violating the mandatory provisions of this section shall be issued a civil citation pursuant to section 1-14 of the Kannapolis City Code having a penalty of one hundred dollars (\$100.00) for residential customer violations and three hundred dollars (\$300.00) for commercial or industrial customer violations. The penalty assessed against a stormwater customer shall be added to the water bill and shall be paid in the same

manner as the water bill. The inability to pay the penalty fees is not relevant to a customers' liability for violating this section. Partial payments for city enterprise services shall be first applied in accordance with City policy. The provisions of this section may also be enforced by actions for abatement or injunction.

#### **C. Criminal Penalties**

Violation of this ordinance may be enforced as a misdemeanor subject to the maximum fine permissible under North Carolina law.

### **9.5.3 PROCEDURES**

#### **A. Initiation/Complaint**

Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint shall state fully the alleged violation and the basis thereof, and shall be filed with the Director of Public Works or his designee, who shall record the complaint. The complaint shall be investigated promptly by the Director of Public Works or his designee.

#### **B. Inspection**

The Director of Public Works or his designee shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this ordinance.

#### **C. Notice of Violation and Order to Correct**

When the Director of Public Works or his designee finds that any building, structure, or land is in violation of this ordinance, the Director of Public Works or his designee shall notify, in writing, the property owner or other person violating this ordinance. The notification shall indicate the nature of the violation, contain the address or other description of the site upon which the violation is occurring, order the necessary action to abate the violation, and give a deadline for correcting the violation. If civil penalties are to be assessed, the notice of violation shall also contain a statement of the civil penalties to be assessed, the time of their accrual, and the time within which they must be paid or be subject to collection as a debt.

The Director of Public Works or his designee may deliver the notice of violation and correction order personally, by certified or

registered mail, return receipt requested, or by any means authorized for the service of documents by Rule 4 of the North Carolina Rules of Civil Procedure.

If a violation is not corrected within a reasonable period of time, as provided in the notification, the Director of Public Works or his designee may take appropriate action under this ordinance to correct and abate the violation and to ensure compliance with this ordinance.

**D. Extension of Time**

A person who receives a notice of violation and correction order, or the owner of the land on which the violation occurs, may submit to the Director of Public Works or his designee a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the person requesting the extension, the Director of Public Works or his designee may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding 90 days. The Director of Public Works or his designee may grant 90 day extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating this ordinance. The Director of Public Works or his designee may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.

**E. Enforcement After Time to Correct**

After the time has expired to correct a violation, including any extension(s) if authorized by the Director of Public Works or his designee, the Director of Public Works or his designee shall determine if the violation is corrected. If the violation is not corrected, the Director of Public Works or his designee may act to impose one or more of the remedies and penalties authorized by this ordinance.

**F. Emergency Enforcement**

If delay in correcting a violation would seriously threaten the effective enforcement of

this ordinance or pose an immediate danger to the public health, safety, or welfare, then the Director of Public Works or his designee may order the immediate cessation of a violation. Any person so ordered shall cease any violation immediately. The Director of Public Works or his designee may seek immediate enforcement, without prior written notice, through any remedy or penalty authorized by this article.

## 9.6. SEDIMENTATION AND EROSION CONTROL.

### 9.6.1. SECTION RESERVED

This section is reserved for future inclusion of local sedimentation and erosion control administration and enforcement. Until such time, the NC Department of Environment <sup>(1)</sup>Quality (NCDEQ) shall have jurisdiction in Kannapolis. State standards, requirements and procedures shall apply to all projects in the City of Kannapolis City limits.

*References: American Society of Civil Engineering Design and Construction of Urban Stormwater Management Systems (WEF Manual of Practice FD- 20, 1992), at 496-97; Dewberry & Davis, Land Development Handbook: Planning, Engineering & Surveying (McGraw-Hill: 1996), at 629.*

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(1) TA-2019-05 – City Council approved 12/09/2019